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नई दिल्ली, शनिवार, अक्टूबर 9, 1993/आश्विन 17, 1915

No. 30]

NEW DELHI, SATURDAY, OCTOBER 9, 1993/ASVINA 17, 1915

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह स्वतंत्र संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 6 अगस्त, 1993

आ. अ. 111.—निर्वाचन आयोग 1991 की निर्वाचन
अर्जी सं. 3 में कलकत्ता उच्च न्यायालय के तारीख 26
फरवरी, 1993 के आदेश को लोक प्रतिनिधित्व अधिनियम,
1951 (1951 का 53) की धारा 106 के अनुसरण में
इसके द्वारा प्रकाशित करता है।

[सं 82/पब.-लो.स./3/91]

आदेश में,
रामकिशन, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 6th August, 1993

O.N. 111.—In pursuance of Section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951), the Election Com-
mission hereby publishes the order dated the 26th February,
1993 of the High Court at Calcutta in Election Petition No.
3 of 1991.

[No. 82/WB-HP/3/91]

By Order,
RAM KISHAN, Secy.

Election Petition Case No. 3 of 1991
IN HIGH COURT AT CALCUTTA

In Re: Priya Ranjan Das Munshi

26-2-1993

Mr. U.P. Mukherjee, Advocate for the petitioner pray: for
four weeks' time which was refused, he could not proceed with
the case. This is an election matter with regard to elections
which were held on 20-5-91 and 12-6-91. The matter is still
not ready for hearing. Since then a long time has passed even
after declaration of the election results, which have taken
effect. This application is thus dismissed for non-prosecution.
The order will not be treated as a pronouncement upon the
merits of the controversy.

Sd/-

Ajoy Nath Ray, J.

गृहि-पत्र

नई दिल्ली, 6 मिनम्बर 1993

आ. अ. 112.—आयोग के तारीख 7 जुलाई, 1992
के आदेश सं 76/बिहार-वि.स./92 में, स्तम्भ 4 में क्रम सं.
428 के सामने, "श्री जोहानी मुक्का, ग्राम-गोत्रा, पोस्ट-
मिमहेगा, जिला गुमला, बिहार" के स्थान पर "श्रीमती जोहानी

एक्का, ग्राम गोत्रा, पोस्ट-सिमडेगा, जिला गुमला, बिहार”
पढ़ा जाए।

[सं. बिहार-वि. स./312/90]

आदेश से

रामकिशन, सचिव

CORRIGENDUM

New Delhi, the 6th September, 1993

O.N. 112.—In the Commission's Order No. 76/BR-LA/92, dated 7th July, 1992, the entry in Column 4 against Sl. No. 428 shall be read as “Smt. Johani Ekka, Village-Gotra, Post-Simdega, District-Gumla, Bihar” instead of “Shri Johani Ekka Village-Gotra, Post-Simdega, District-Gumla, Bihar.”

[No. BR-LA/312/90]

By Order,

RAM KISHAN, Secy.

नई दिल्ली, 16 सितम्बर, 1993

आ. अ. 113.—खमल और दीव संसदीय निर्वाचन क्षेत्र से लोकसभा के लिए हुए श्री देवजी जोगीभाई टंडेन के निर्वाचन को प्रश्नगत् करने हुए निर्वाचन आयोग 1991 की निर्वाचन अर्जी सं. 2 में बम्बई उच्च न्यायालय के तारीख 13-1-1992 के आदेश की लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

2. आयोग की तारीख 19 जुलाई, 1993 की समसंख्यांक अधिसूचना एतद्द्वारा रद्द की जाती है।

[सं. 82/द और द-नो.स./2/91]

आदेश से,

बलवन्त सिंह, सचिव

New Delhi, the 16th September, 1993

O.N. 113.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Order dated 13th January, 1992 of the High Court of Judicature at Bombay in Election Petition No. 2 of 1991 calling in question the election of Shri Devji Jogibhai Tandel to the House of the People from Daman & Diu Parliamentary Constituency.

2. The Commission's notification of even number dated the 19th July, 1993 is hereby cancelled.

[No. 82/D&D-HP/2/91]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Election Petition No. 2 of 1991

Mrs. Urmila Naik

..Petitioner

Versus

Senjay P. Singh & Ors.

..Respondents

For hearing and final disposal.

Coram : Sindhkar, J.

Dated 13-1-1992.

Absent.

Shri K. D. Shah with Mrs. Uma K. Shah for Respondents, P.C.: On 13th December, 1991, I had passed an order directing petition to be fixed for hearing today. Meanwhile parties were to complete inspection, discovery and production of documents.

Today on behalf of Petitioner, no one appears and the petitioner is also absent.

I dismiss the petition as is permissible as held in AIR 1984 S.C. 135 in

Dr. P. Nalla Jhampy Thera, Appellant.

Versus

B. L. Shankar & Others Respondent.

Accordingly, the petition is dismissed with costs.

The respondents are directed to recover the same from the deposit made by the petitioner.

Prothonotary & Senior Master to act on Minutes of order.

Certified copy expedited.

Sd/-A.M. Trivedi.

नई दिल्ली, 24 सितम्बर, 1993

आ. अ. 114.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एतद्द्वारा 1991 की निर्वाचन अर्जी सं. 1 में दिया गया पटना उच्च न्यायालय (रांची बेंच, रांची) का तारीख 1 सितम्बर, 1993 का आदेश प्रकाशित करता है।

[सं. 82/बिहार/(1/91)/93(आर)]

आदेश से,

रामकिशन, सचिव

New Delhi, the 24th September, 1993

O.N. 114.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated the 1st September, 1993 of the High Court of Judicature at Patna (Ranchi Bench, Ranchi) in Election Petition No. 1 of 1991 (R).

[No. 82/BR/(1/91)/93(R)]

By Order,

RAM KISHAN, Secy.

Election Petition No. 1 of 1991(R)

An application under Sections 80 and 81 of the Representation of People Act, 1951.

Arvind Kumar Lal

..Petitioner.

Versus

Ram Tahal Choudhary and others

..Respondents.

For the petitioner : Mr. A. K. Lal (in person).

For the respondents : M/s. Barnwal S. Lal and M. Y. Eqlal, G.R.

PRESENT

Hon'ble Mr. Justice R. N. Sahay.

R. N. Sahay, J. :—By means of this petition 80 and 81 of the Representation of People Act, 1951, the petitioner who is a practicing Advocate of this Court has questioned the election of respondent No. 1, Sri Ram Tahal Choudhary from 49, Ranchi Lok Sabha General Parliamentary Constituency held in the month of May, 1991. The petitioner has also

prayed that he be declared to be duly elected from the aforesaid Constituency.

2. The petitioner along with respondent nos. 1 to 45 filed nomination for contesting the election. Respondent no. 1 was declared elected on 17-6-91 as he secured highest number of votes.

3. The facts of the case are not in dispute and hence the petition is being disposed of without taking any evidence.

4. The petitioner in paragraphs 4 to 17 of the election petition has set out the grounds on which the election of respondent no. 1 has been challenged and it will be convenient to quote the said paragraphs as hereunder :—

"That at the time of delivery of their respective nomination papers under Section 33(1) of the Representation of People Act, 1951 the respondents had neither deposited nor caused to be deposited a sum of five hundred rupees or where the respondent was a member of Scheduled Caste or Scheduled Tribe a sum of two hundred and fifty rupees (as required by Section 34 of the Representation of People Act, 1951) with the returning officer in cash at the time of delivery of nomination paper nor the respondents had enclosed with their respective nomination papers any receipt showing that the said sum had been deposited or caused to be deposited by them or on their behalf in the Reserve Bank of India or in a Government Treasury.

5. That as a matter of fact the respondents had deposited or caused to be deposited the aforesaid sum of Rs. 500 or 250 rupees, as the cause may be, in the Nazarat of the Ranchi District Collectorate.

6. That the aforesaid Nazarat office is separately situated from the office of the returning officer. The Nazir used to receive the aforesaid sum in his office hour which ranged from 10.00 a.m. to 05.00 p.m. It is submitted that the respondents were free to deposit the aforesaid sum at any time and to deliver their nomination paper at any different time. In some cases the said deposits have been made even prior to two and/or three days of the delivery of the nomination paper.

The details of some of such deposits are as follows :

Sl. No.	Name of the Candidate	Sl. no. of respondent	Date of deposit in Nazarat	Date of delivery of nomination paper
1.	Ambika Pd. Singh	7	14-4-91	25-4-91
2.	Jagdish Rajak	18	19-4-91	22-4-91
3.	Ravindra Oraa	31	23-4-91	24-4-91
4.	Shankar Munda	38	24-4-91	26-4-91
5.	Shao Pd. Saha	40	22-4-91	23-4-91
6.	Sheikh Mustafa	41	24-4-91	25-4-91

7. That it is further submitted that the respondents had deposited the aforesaid sum in the Nazarat as nomination fee and not as security deposit as required by law.

8. That the said Nazir of the said Nazarat had granted a receipt of such deposits to each of the respondents separately under his seal and signature.

9. That each of the respondents had enclosed the receipt granted to him by the Nazir with the nomination paper showing that the said sum had been deposited in the Nazarat with the Nazir by the respondent concerned or on his behalf.

10. That the returning officer had wrongly treated the receipt issued by the aforesaid Nazir as equivalent to receipts showing deposits made in the Reserve Bank of India or in a Government Treasury.

11. That the petitioner had deposited a sum of Rs. 500 in Ranchi Government Treasury and had enclosed the receipt granted by the said treasury with his nomination paper at the time of the delivery of the said nomination paper to the returning officer on 26th April, 1991.

12. That Nazir is neither a functionary nor any statutory authority under the election laws nor he had any power to receive any deposit made under Sections 33 and 34 of the Representation of People Act, 1951, nor he had any authority or power to issue any receipt of such deposit made by or on behalf of a candidate or to issue any receipt of such deposit under his seal and signature.

13. That the deposits made by the respondents in the Nazarat of the District Collectorate and not with the returning office at the time of the delivery of the nomination paper and the enclosure of the receipts issued by the Nazir with the nomination papers by the respondents is in flagrant disregard of law and a failure on their part to comply with the mandatory provisions of Sections 33 and 34 of the Representation of People Act, 1951.

14. That the respondents shall be deemed not to have been duly nominated for election to the Xth Lok Sabha from 49, Ranchi Parliamentary Constituency.

15. The Returning Officer, ought to have rejected the nomination of all the respondents on ground of their failure to comply with the Provisions of Sections 33 and 34 of the representation of the People Act, 1951.

16. That the nomination of the petitioner only was proper and in order and it was rightly and properly accepted by the Returning Officer.

17. That the Returning Officer had improperly accepted the nomination of respondent No. 1 which has materially affected the result of the Election and hence the election of the Respondent No. 1 is void. Similarly the Returning Officer had improperly accepted the nomination of other respondents also which had materially affected the result of the election rendering the same as void."

5. Written statements have been filed on behalf of respondent No. 1 and the Returning Officer (Respondent No. 46). Respondent No. 1 in his written statement has asserted that there was complete compliance of sections 31(1) and 34 of the Representation of the People Act. The Returning Officer as usual had arranged to receive the security money through his Nazir since the Returning Officer happened to be the Collector of Ranchi. Returning Officer had directed respondent No. 1 to deposit the security money with the Nazir who was working on behalf of the Returning Officer. The Nazir was acting as staff of the Returning Officer. It has been averred that it was not possible or practicable for the Returning Officer to receive the security money or nomination money from each candidate and to issue receipt showing deposit.

6. Returning Officer in his written statement has stated that all persons who had filed the nomination papers for the 49 Parliamentary Constituency deposited Rs. 500/- or 250 as security money in the District Nazarat Section of Ranchi Collectorate. The Nazir granted a receipt for the above amount and concerned persons filed their nomination paper with deposit receipt U/s 33(1) and 34 of the said Act. According to the Returning Officer under the Board's Miscellaneous Rules, different categories of Sections are under the Deputy Commissioner's control, and Nazarat Section is one of them. Nazarat Section is responsible for Government transactions, Receipt of money and payment work of Deputy Commissioner's Office is done by the District Nazarat Section. It is not possible for the Deputy Commissioner or the Returning Officer to receive money personally. Thus according to the Returning Officer, Nazir was authorised to receive the security money as per Board's Miscellaneous Rules.

7. The only question that arises for consideration is as to whether the nomination papers of respondent Nos. 1 to 45 were wrongly accepted by the Returning Officer as the secu-

mony of the contesting respondents was not deposited in terms of section 33(1) of the Representation of the People Act, 1951.

8. Section 33(1) of the Act reads as follows:—

“Presentation of nomination paper and requirements for a valid nomination—(1) On or before the date appointed under clause (a) of section 30 each candidate shall either in person or by his proposer between the hours of eleven O’Clock in the forenoon and three O’Clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.”

By section 34 of the Act, it is provided as follows—

“34. Deposits (1) : A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited—

- (a) in the case of an election from a Parliamentary constituency, a sum of five hundred rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two hundred and fifty rupees; and
- (b) in the case of an election from an Assembly or Council constituency, a sum of two hundred and fifty rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of one hundred and twenty five rupees.

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.

- (2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) or as the case may be, sub-section (1A) of section (3) the candidate has either deposited or caused to be deposited that sum with the returning officer in case or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.”

By section 36 of the Act, it is provided as follows:—

“36. Scrutiny of nominations : (1) On the date fixed for the scrutiny of nominations under section 30 the candidates, their election agents, one proposed or each candidate and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

- (2) The returning officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may either on such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds—

- (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely—

Part II of the Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963) or

- (b) that there has been a failure to comply with any of the provisions of section 3 of section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

3. Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.”

It is specifically provided by sub-section (4) of section 36 of the Act that returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial in character.

9. The election petitioner has submitted that sub-section (2) of section 34 of the Act is mandatory and must be complied literally and since respondent nos. 1 to 45 had not deposited the security money with the Returning officer their nomination papers were defective and wrongly accepted by the returning officer.

10 The decision of the Supreme Court in Chaman Lal Sahu Vs. Fakruddin Ali Ahmed reported in 1975 SC 1288 and Narmada Pd. Vs. Chaganal reported in AIR 1969 SC 395 have been relied upon by the petitioner in support of his contention.

In Charanlal's case (supra), it was held by the Hon'ble Supreme Court that section 5(c)(2) of the Presidential and Vice Presidential Election Act, 1952 is mandatory and enclosing of cheque with nomination paper was invalid as the provision required that the candidate shall deposit or cause to be deposited a sum of Rs. 2500 with the Returning Officer in cash or a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in the Government Treasury. The ratio of the aforesaid case is hardly applicable to the facts of the present case.

In Narmada Prasad's case (supra) nomination paper of the candidate was rejected by the Returning Officer because the candidate was an elector of a different constituency and had not filed a copy of the electoral roll of that Constituency or the relevant part thereof or certified copy of the relevant entries of such Roll as enjoined by Section 33(5) of the Act. The candidate had filed a certificate issued by Tahasildar. The Supreme Court held that there was no compliance of the provision of section 33(5) of the Act. The petitioner has relied on the observation made by the Supreme Court in the above case that “it is well understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of compliance are excluded.”

This decision also does not support the contention of the petitioner as there was no compliance at all of the statutory requirement.

11 In my opinion, the contention of the petitioner that security money in terms of section 34 could only be deposited with the Returning Officer in person, is plainly an erroneous contention and cannot be accepted. The Returning Officer has to take assistance of his subordinates in these matters. The deposit of the security money with the Nazir of the Collectorate was due compliance of the requirement of section 34 of the Act.

12. Lord Goddard C.J. said in Barnes Vs. Jarvis (1953) 1 SLR 649. A certain amount of common sense must be applied in constituting statutes. The objects of the Act has to be construed. Again in The Duke of Buccleuch (1889) 15 PD 36 Lindley L.J. observed “you are not to construe the Act of Parliament as to reduce it to rank Absurdity. You are not to attribute general language used by the Legislature in this case, any more than in any other case, a meaning which would not carry out its object but produce, consequences which to the ordinary intelligence are absurd.”

13. In *R. V. Tonbridge Overseers* (1884) 13 Q.B.D. 339. Brett L.J. said "If the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all there would be reason why you should not read it according to its ordinary grammatical meaning."

14. If a too literal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a court of construction to consider the state of the law at the time the Act was passed. In *River Wear Commissioners Vs. Adamson* (1876) 1 Q.B.D. 546, 549, Jessel M.R. "with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation or whether it may not be desirable to put upon the language used a secondary or restricted meaning or perhaps to adopt a construction not quite strictly grammatical." (Craies on Statute Law Seventh Edition).

15. The Treason Act 1766. S.I. gave a form of oath which it was required should be taken by certain persons. The form of oath contained the name of King George III and made no provision for the necessary alteration in the name of the sovereign at his death. It was argued in *Miller V. Salomons* 11X52 7B X9757 that as the form of the oath mentioned the name of King George only the obligation to administer it ceased with the reign of that sovereign, because it was applicable to no other than to him. "I think" said Parke B. in his judgment, "this argument cannot prevail. It is clear that the legislature meant the oath to be taken always thereafter, and as it could not be taken in those words during the reign of a Sovereign not of the name of George, it

follows that the name George is merely used by way of designating the existing Sovereign and the oath must be altered from time to time in the name of the Sovereign. This is an instance in which the language of the Legislature must be modified, in order to avoid absurdity and inconsistency with its manifest intentions [Cf. *R. V. Everdon* (1807) 9 East 101].

The interpretation of the petitioner of Section 34 of the Act that deposit must be made personally with the returning officer, is too technical interpretation to be accepted as it will lead to absurdity which must be avoided.

16. The contention of the election-petition that rule 322 of the Board's Miscellaneous Rules cannot be invoked in respect of the deposits under section 34 of the Representation of Peoples Act, is not correct submission. It there are cannot be held that nomination paper of respondent no. 1 and other respondents was invalid on account of breach of Section 34 of the Act.

17. In my opinion, the nomination paper of the respondents was in accordance with law and was rightly accepted by the Returning Officer.

18. This Election petition has no merit and it is accordingly dismissed but without cost. The Joint Registrar shall intimate the substance of this decision to the Election Commission and the Speaker of the Lok Sabha and also send to the Election Commission an authenticated copy of the judgment.

PATNA HIGH COURT

RANCHI BENCH,

Dated : The 1st Sept. 1993.

Sd/-illegible

MAFR/AKP/Ct. 5/Cp. 4.

